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Attorneys for Defendant  
NU SKIN ENTERPRISES, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF MARIN

ENVIRONMENTAL RESEARCH CENTER, a  
California non-profit corporation,  
  
Plaintiff,  
  
v.  
  
NU SKIN ENTERPRISES, INC.; and DOES 1-  
100;  
  
Defendants.

CASE NO. CIV 1202744  
~~[PROPOSED] STIPULATED CONSENT  
JUDGMENT; [PROPOSED] ORDER~~  
  
Health & Safety Code § 25249.5 *et seq.*  
  
ACTION FILED: June 6, 2012  
TRIAL DATE: None Set

**FILED**

OCT - 8 2013  
KIM TURNER, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: R. Smith, Deputy

1           **1. INTRODUCTION**

2           **1.1**     On June 6, 2012 , Plaintiff Environmental Research Center (“ERC” or “Plaintiff”), a  
3 non-profit corporation, as a private enforcer, and in the public interest, filed a legal action (the  
4 “Complaint”) pursuant to the provisions of Cal. Health & Safety Code Section 25249.5 et seq.  
5 (“Proposition 65”) against Nu Skin Enterprises, Inc. (“Nu Skin” or “Defendant”). ERC claims that  
6 the products manufactured and distributed by Nu Skin, as more fully described in Section 1.3,  
7 contain lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and that  
8 such products expose consumers at a level requiring a Proposition 65 warning. ERC and Nu Skin  
9 shall sometimes be referred to individually as a “Party” or collectively as the “Parties.”

10           **1.2**     ERC is a California non-profit corporation dedicated to, among other causes, helping  
11 safeguard the public from health hazards by bringing about a reduction in the use and misuse of  
12 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees and  
13 encouraging corporate responsibility. ERC has diligently prosecuted this matter and is settling this  
14 case in the public interest.

15           **1.3**     Nu Skin is a business entity that employs ten or more persons. Nu Skin arranges the  
16 manufacture, distribution and/or sale the following dietary supplements in the State of California,  
17 including without limitation Pharmanex Cartilage Formula; Pharmanex G3; Pharmanex ReishiMax  
18 GLp, Pharmanex My Victory! DuoLean; Pharmanex Digestive Formula and Pharmanex Cortitrol  
19 Cortisol Management (the “Covered Products”).

20           **1.4**     The Complaint is based on allegations contained in Notices of Violation dated June  
21 29, 2010, September 24, 2010 and January 14, 2011 served on the California Attorney General,  
22 other public enforcers and Nu Skin. A true and correct copy of these Notices of Violation is  
23 attached hereto as Exhibit A. On October 8, 2010, ERC withdrew the June 29, 2010 Notice to the  
24 extent it referenced Nu Skin Pharmanex Standard Teagreen 97 Cell Protection; Nu Skin Pharmanex  
25 Standard Cordymax CS-4 Stamina Boost; and Nu Skin Pharmanex Standard Bioginko 27/7 Mental  
26 Sharpness. More than 60 days have passed since these Notices were mailed and no public  
27 enforcement entity has filed a complaint against Nu Skin with regard to the Covered Products or the  
28 alleged violations.

1           **1.5**    Nu Skin denies all material allegations contained in the Complaint and specifically  
2 denies that the Covered Products, as defined herein, require a Proposition 65 warning or otherwise  
3 cause harm to any person. Defendant contends that any lead present in the Covered Products is the  
4 result of naturally occurring lead levels, as provided for in California Code of Regulations, Title 27,  
5 Section 25501(a). Defendant additionally maintains that all of the Covered Products are in full  
6 compliance with applicable U.S. Federal Standards, as well as standards established by the World  
7 Health Organization (WHO), Health Canada, the European Union, and the Food & Agricultural  
8 Organization (FAO).

9           **1.6**    Subsequent to receiving ERC's Notices, Nu Skin engaged in an effort to reformulate  
10 the Covered Products and, based on test batches carried out in small scale testing, has reduced the  
11 lead levels to less than 0.5 micrograms of lead per day in the following products: Nu Skin  
12 Pharmanex Cartilage Formula; Nu Skin Pharmanex G3; and Nu Skin Pharmanex ReishiMax GLp.

13           **1.7**    The Parties have entered into this Consent Judgment in order to settle, compromise  
14 and resolve disputed claims and thus avoid prolonged and costly litigation. Nothing in this Consent  
15 Judgment shall constitute or be construed as an admission by any of the Parties, or by any of their  
16 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
17 divisions, affiliates, franchisors, franchisees, licensors, licensees, customers, distributors,  
18 wholesalers, or retailers, of any fact, conclusion of law, issue of law, violation of law, fault,  
19 wrongdoing, or liability, including without limitation, any admission concerning any alleged  
20 violation of Proposition 65, nor shall this Consent Judgment be offered or admitted as evidence in  
21 any administrative or judicial proceeding or litigation in any court, agency, or forum, except with  
22 respect to an action seeking to enforce the terms of this Consent Judgment.

23           **1.8**    Except as expressly set forth herein, nothing in this Consent Judgment shall  
24 prejudice, waive or impair any right, remedy, argument, or defense the Parties may have in any  
25 other or future legal proceeding unrelated to these proceedings.

26           **1.9**    The Effective Date of this Consent Judgment shall be the date on which it is entered  
27 as a judgment by this Court.

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**2. JURISDICTION AND VENUE**

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction over Nu Skin as to the acts alleged in the Complaint, that venue is proper in Marin County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all claims which were or could have been asserted in this action based on the facts alleged in the Notices or the Complaint.

**3. INJUNCTIVE RELIEF, WARNINGS AND TESTING**

**3.1** Any Covered Product manufactured on or after the Effective Date that Nu Skin thereafter sells in California, or markets or distributes for sale in California, or offers for sale to a third party for retail sale in California must either (1) qualify as a "Reformulated Product" under Section 3.3 or (2) meet the warning requirements set out in Section 3.2. Covered Products manufactured before the Effective Date are therefore not subject to the obligations imposed by Section 3 regardless of when they are distributed or sold.

**3.2 Warning**

If a warning is required pursuant to Section 3.1, then Nu Skin shall provide the following warning:

**WARNING: This product contains [lead,] a chemical known to the State of California to cause [cancer and] birth defects or other reproductive harm.**

The words "cancer and" shall be included in the warning only if the maximum daily dose recommended on the label contains more than 15 micrograms ("mcg") of lead as determined by the quality control methodology set forth in Sections 3.4.2 and 3.3.1.

**3.3** Inclusion of the word "lead" is optional. The warning shall be securely affixed to or printed upon the container or label of the Covered Product. The warning shall be displayed with such conspicuousness, as compared with other words, statements, or design of the label or container, as applicable, to render the warning likely to be read and understood by an ordinary

1 individual under customary conditions of purchase or use. The warning appearing on the label or  
2 container shall be at least the same size as the largest of any other health or safety warnings  
3 appearing on the label or container, as applicable, of such Covered Product, and the word  
4 “WARNING” shall be in all capital letters and in bold print.

5 A Reformulated Product is one for which the maximum recommended daily serving on the  
6 label contains no more than 0.5 micrograms of lead per day as determined by the quality control  
7 methodology described in Sections 3.4.2 and 3.3.1.

8 **3.3.1** For purposes of this Consent Judgment, daily lead exposures levels shall be  
9 measured in micrograms, and shall be calculated using the following formula: micrograms of lead  
10 per gram of product, multiplied by grams of product per serving of the product (using the largest  
11 serving size appearing on the product label), multiplied by servings of the product per day (using  
12 the largest number of servings in a recommended dosage appearing on the product label), which  
13 equals micrograms of lead exposure per day.

14 **3.3.2** As used in this Consent Judgment, “no more than 0.5 mcg of lead per day”  
15 means that the samples tested by Nu Skin under Section 3.4 collectively yield an average daily  
16 exposure of no more than 0.5 mcg of lead (with daily exposure calculated pursuant to Section 3.3.1  
17 of this Consent Judgment).

#### 18 **3.4 Testing**

19 **3.4.1** Before Nu Skin’s first distribution or sale of a Covered Product in California  
20 manufactured after the Effective Date, Nu Skin shall arrange for the lead testing of at least five (5)  
21 randomly selected samples of each Covered Product (in the form intended for sale to the end-user)  
22 to be distributed or sold to California. Before Nu Skin’s first distribution or sale of a Covered  
23 Product manufactured after the Effective Date, and continuing for at least three (3) years thereafter,  
24 on an annual basis, Nu Skin shall test the Covered Products for lead content in the manner provided  
25 for in this Consent Judgment for those Covered Products to be distributed or sold in California. The  
26 testing requirements of Section 3.4 do not apply to a Covered Product for which Nu Skin provides  
27 the warning specified in Section 3.2.

1           3.4.2 All testing pursuant to this Consent Judgment shall be performed using a  
2 laboratory method that complies with the performance and quality control factors appropriate for  
3 the method used (including limit of detection, limit of quantification, accuracy, and precision) and  
4 that meets the following criteria: Closed-vessel, microwave-assisted acid digestion employing high-  
5 purity reagents, followed by Inductively Coupled Plasma-Mass Spectrometry (ICP-MS), achieving  
6 a limit of quantification of  $\leq 0.010$  mg/kg, or any other testing method agreed upon in writing by  
7 the Parties.

8           3.4.3 All testing pursuant to this Consent Judgment shall be performed by a  
9 laboratory that is approved by, accredited by, or registered with the United States Food & Drug  
10 Administration for the analysis of heavy metals. Upon written request by ERC, Nu Skin shall  
11 provide to ERC any test results and documentation of testing undertaken by Nu Skin pursuant to  
12 Section 3.4 within thirty days of receipt by Nu Skin of ERC's request. Nu Skin may perform this  
13 testing itself only if it provides, in an attachment to the test results Nu Skin provides to ERC, proof  
14 that its laboratory meets the requirements in Section 3.4.2 and Section 3.4.3. Nu Skin shall retain  
15 all test results and documentation for a period of four years from the date of the test.

16           3.4.4 If testing conducted pursuant to this Consent Judgment demonstrates that no  
17 warning is required for a Covered Product during each of three consecutive years, then the testing  
18 requirements of this Section 3.4 are no longer required as to that Covered Product. However, if  
19 after the three year period Nu Skin changes ingredient suppliers for any Covered Products and/or  
20 reformulates any of the Covered Products, Nu Skin shall test that Covered Product at least once  
21 after such change is made.

#### 22   4.    **SETTLEMENT PAYMENT**

23           4.1 In full satisfaction of all potential civil penalties, payment in lieu of civil penalties,  
24 attorneys' fees and costs (which includes, but is not limited to, filing fees and costs of attorneys,  
25 experts and testing nutritional health supplements), Nu Skin shall make a total payment of \$200,000  
26 (Two Hundred Thousand Dollars) within five (5) business days of receipt of Notice of Entry of  
27 Judgment.  
28

1           4.1.1 A total of \$38,000 shall be payable as civil penalties pursuant to Health &  
2 Safety Code Section 25249.7(b)(1), with the first check of 75% [\$28,500] payable to the Office of  
3 Environmental Health Hazard Assessment, and the second check of 25% [\$9,500] payable to  
4 Environmental Research Center. ERC's counsel shall be responsible to forward the civil penalty  
5 payment to OEHHA along with a copy of the transmittal to Nu Skin.

6           4.1.2 A total of \$114,102 shall be payable to Environmental Research Center in  
7 lieu of further civil penalties, for (A) activities such as (1) analysis, researching and testing  
8 consumer products that may contain Proposition 65 listed chemicals; (2) awarding a grant or  
9 donation to California non-profit foundations/entities dedicated to public health; (3) funding ERC's  
10 RxY Program to assist various medical personnel to provide testing assistance to independent  
11 distributors of various products; (4) funding ERC's Got Lead? Program to assist consumers in  
12 testing products for lead; (5) post-settlement monitoring of past consent judgments; and (6) the  
13 continuing enforcement of Proposition 65; and 7) \$5,705 to be donated by ERC to the Center for  
14 Environmental Health for the reduction of toxic chemical exposures; (B) a total of \$24,116 shall be  
15 payable to ERC as reimbursement to ERC for reasonable work costs associated with the  
16 enforcement of Proposition 65 and other costs incurred as a result of investigating, bringing this  
17 matter to Nu Skin's attention, litigating and negotiating this settlement in the public interest.

18           4.1.3 A total of \$20,782 shall be payable to Michael Freund as reimbursement of  
19 ERC's attorneys' fees. A total of 3,000 shall be payable to Karen Evans as reimbursement of  
20 ERC's attorneys' fees.

21           4.2 Nu Skin's payments shall be checks mailed or delivered to the Law Office of  
22 Michael Freund.

## 23       **5. MODIFICATION OF CONSENT JUDGMENT**

24           5.1 This Consent Judgment may be modified only by (i) written agreement and  
25 stipulation of the Parties, followed by entry of a modified consent judgment by the Court, or (ii) as  
26 provided in Sections 5.2 or 5.3.

27           5.2 In the event that Nu Skin modifies the manner in which it distributes the Covered  
28 Products, which results in a change in the way the end user receives any of the Covered Products,

1 Nu Skin may seek to modify the terms of Section 3 subject to the procedures in Section 5.1 and  
2 Section 5.4 so long as the proposed warning method is consistent with the manner in which Nu Skin  
3 sells or distributes the Covered Products and with the provisions of 27 Cal. Code Regs. Section  
4 25601.

5 **5.3** Should ERC, or the California Attorney General, reach a settlement of a Proposition  
6 65 claim regarding the same ingredient(s) as contained in a Covered Product that establishes  
7 allowances for naturally occurring lead that results in less stringent lead standards (“Alternative  
8 Lead Standard”) than those specified in Section 3.3, then Nu Skin shall be entitled to seek to modify  
9 the Consent Judgment to adopt such Alternative Lead Standard as to such Covered Product, subject  
10 to the procedures in Sections 5.1 and 5.4. Should there be an amendment to Proposition 65 or  
11 should OEHHA promulgate regulations that establish a Maximum Allowable Dose Level that is  
12 more or less stringent than 0.5 micrograms per day, Nu Skin or ERC shall be entitled to seek to  
13 modify the Consent Judgment to adopt the new Maximum Allowable Dose Level as to such  
14 Covered Product, subject to the procedures in Sections 5.1 and 5.4. .

15 **5.3.1** Should Nu Skin seek to exclude naturally occurring lead in its calculation of  
16 overall lead content for any Covered Product, Nu Skin will provide separate documentation to ERC  
17 to include a complete list of all ingredients, including the corresponding percentages of each  
18 ingredient within each Covered Product, and other data that independently supports Nu Skin’s  
19 contention that the lead it seeks to exclude is naturally occurring. Nu Skin may update such  
20 information from time to time. Nu Skin is entitled to submit to ERC documentation pursuant to  
21 Section 5.3.1 which shall be held in confidence and kept confidential by ERC.

22 **5.4** If Nu Skin seeks to modify the Consent Judgment under Section 5.2 or 5.3, then Nu  
23 Skin shall provide written notice to ERC of its intent and include the settlement containing the  
24 alternative warnings or Alternative Lead Standard (“Notice of Intent”). If ERC seeks to meet and  
25 confer regarding the proposed modification in the Notice of Intent, then ERC shall provide written  
26 notice to Nu Skin within thirty (30) days of receiving the Notice of Intent. If ERC notifies Nu Skin  
27 in a timely manner of ERC’s intent to meet and confer, then the Parties shall meet in confer in good  
28 faith as required in this Section 5.4. The Parties shall meet in person within thirty (30) days of



1 ERC's notification of its intent to meet and confer. Within thirty (30) days of such meeting, if ERC  
2 disputes the proposed modification, ERC shall provide to Nu Skin a written factual basis for its  
3 position. The Parties shall continue to meet and confer for an additional thirty (30) days in an effort  
4 to resolve any remaining disputes. The Parties may agree in writing to different deadlines for the  
5 meet and confer period herein.

6 **5.5** In the event of a modification under Section 5.2 or 5.3, Nu Skin shall reimburse ERC  
7 its reasonable attorneys' fees and costs in filing and arguing a joint motion or application in support  
8 of a modification of the Consent Judgment; provided however, that those fees and costs shall not  
9 exceed \$7,000 (seven thousand dollars) total without the prior written consent of Nu Skin.

## 10 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT JUDGMENT**

11 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate this  
12 Consent Judgment.

13 **6.2** Any Party may, by motion or application for an order to show cause filed with this  
14 Court, enforce the terms and conditions contained in this Consent Judgment provided that it first  
15 undertakes a good faith effort to resolve the dispute informally as required under Section 13. The  
16 prevailing Party may request that the Court award its reasonable attorney's fees and costs associated  
17 with such motion or application.

18 **6.3** In the event that ERC alleges that any Covered Product fails to qualify as a  
19 Reformulated Product (and for which ERC alleges that no warning has been provided pursuant to  
20 Section 3.2), ERC shall inform Nu Skin in a reasonably prompt manner of its test results, including  
21 information sufficient to permit Defendant to identify the Products at issue. Nu Skin shall, within  
22 thirty (30) days following such notice, provide ERC with testing information demonstrating Nu  
23 Skin's compliance with Section 3.3 if warranted. The Parties shall first attempt to resolve the  
24 matter prior to ERC taking any further legal action pursuant to Paragraph 13.

## 25 **7. APPLICATION OF CONSENT JUDGMENT**

26 **7.1** This Consent Judgment shall apply to, be binding upon and benefit the Parties, and  
27 respective subsidiaries and divisions and the successors and assigns of any of them.

1           **8.     BINDING EFFECT, CLAIMS COVERED AND RELEASED**

2           **8.1**     This Consent Judgment is a full, final, and binding resolution between ERC, on  
3     behalf of itself, and in the public interest, and Nu Skin, of any alleged violation of Proposition 65 or  
4     its implementing regulations for failure to provide Proposition 65 warnings of exposure to lead from  
5     the handling, use or consumption of the Covered Products. ERC, on behalf of itself, its agents,  
6     officers, representatives, attorneys, successors and/or assignees, and in the public interest, hereby  
7     releases and discharges: (a) Nu Skin and its parent companies, subsidiaries, affiliates, and divisions;  
8     (b) each of their respective licensors, licensees, franchisors, franchisees, joint venturers, partners,  
9     vendors, manufacturers, packagers, contractors, and finished product and ingredient suppliers; (c)  
10    each of the distributors, wholesalers, retailers, users, packagers, customers, and all other entities in  
11    the distribution chain down to the consumer, of the persons and entities described in (a) and (b)  
12    above; and (d) each of the respective officers, directors, shareholders, employees, and agents of the  
13    persons and entities described in (a) through (c), above (the persons and entities identified in (a),  
14    (b), (c), and (d), above, including the predecessors, successors and assigns of any of them, are  
15    collectively referred to as the "Released Parties"), from any and all claims, actions, causes of action,  
16    suits, demands, liabilities, damages, penalties, fees (including but not limited to investigation fees,  
17    attorney's fees and expert fees), costs and expenses (collectively, "Claims") as to any alleged  
18    violation of Proposition 65 arising from or related to the failure to provide Proposition 65 warnings  
19    for lead in the Covered Products manufactured before the Effective Date. The provisions in this  
20    section do not apply to private label customers of Nu Skin. Compliance with the terms of this  
21    Consent Judgment shall be deemed to constitute compliance with Proposition 65 regarding alleged  
22    exposures to lead in the Covered Products.

23           **8.2**     ERC, on behalf of itself, its agents, representatives, attorneys, successors and/or  
24    assignees, and not on behalf of the general public, hereby releases and discharges the Released  
25    Parties from any and all known and unknown Claims for any violations of Proposition 65 or based  
26    on any other statutory or common law, which have been alleged or could have been alleged, arising  
27    from or relating to any exposures or failure to warn concerning lead or lead compounds in the  
28    Covered Products. It is possible that other Claims not known to the Parties arising from or relating

1 to any exposures or failure to warn concerning lead or lead compounds in the Covered Products will  
2 develop or be discovered. ERC, on behalf of itself only, acknowledges that this Consent Judgment  
3 is expressly intended to cover and include all such Claims, including all rights of action therefor.  
4 ERC has full knowledge of the contents of California Civil Code section 1542. ERC, on behalf of  
5 itself only, acknowledges that the Claims released in Sections 8.1 and 8.2 may include unknown  
6 Claims, and nevertheless waives California Civil Code section 1542 as to any such unknown  
7 Claims. California Civil Code section 1542 reads as follows:

8 "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
9 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO  
10 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING  
11 THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST  
12 HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT  
13 WITH THE DEBTOR."

14 ERC, on behalf of itself only, acknowledges and understands the significance and consequences of  
15 this specific waiver of California Civil Code section 1542. This release shall be effective as a full  
16 and final accord and satisfaction as to, and as a bar to, the Claims released in this Section 8.2. ERC,  
17 on behalf of itself, its agents, representatives, attorneys, successors and/or assignees, in its  
18 individual capacity, further agrees that compliance with the terms of this Consent Judgment shall be  
19 deemed to constitute compliance with Proposition 65 regarding any alleged exposures or failure to  
20 warn concerning lead or lead compounds in any of the Covered Products manufactured before the  
21 Effective Date.

22 **8.3** ERC, on one hand, and Nu Skin, on the other hand, release and waive all Claims  
23 they may have against each other for any statements of actions made or undertaken by them in  
24 connection with the Notices or the Complaint. Provided however, nothing in this Section 8 shall  
25 affect or limit any Party's right to seek to enforce the terms of this Consent Judgment.

## 26 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

27 **9.1** In the event that any of the provisions of this Consent Judgment are held by a court  
28 to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

1           **10. GOVERNING LAW**

2           The terms and conditions of this Consent Judgment shall be governed by and construed in  
3 accordance with the laws of the State of California.

4           **11. PROVISION OF NOTICES**

5           All notices required to be given to either Party to this Consent Judgment by the other shall  
6 be in writing and sent to the following agents listed below by (a) first-class mail, (b) overnight  
7 courier, or (c) personal delivery:

8           **FOR ENVIRONMENTAL RESEARCH CENTER:**

9           Chris Heptinstall, Executive Director  
10           Environmental Research Center  
11           3111 Camino Del Rio North, Suite 400  
12           San Diego, CA 92108

13           Michael Bruce Freund  
14           Law Offices of Michael Freund  
15           1919 Addison Street, Suite 105  
16           Berkeley, CA 94704  
17           Telephone: (510) 540-1992  
18           Facsimile: (510) 540-5543

19           **FOR NU SKIN ENTERPRISES, INC.**

20           Tyler Whitehead, Esq.  
21           Nu Skin Enterprises, Inc.  
22           75 West Center Street  
23           Provo, UT 84601  
24           Telephone: (801) 345-3853

25           With a copy to:

26           William Tarantino  
27           Morrison & Foerster LLP  
28           425 Market Street, 35th Floor  
29           San Francisco, CA 94105  
30           Telephone: (415) 268-6358  
31           Facsimile: (415) 268-7522

32           **12. DRAFTING**

33           The terms of this Consent Judgment have been reviewed by the respective counsel for the  
34 Parties to this Consent Judgment prior to its signing, and each Party has had an opportunity to fully  
35

1 discuss the terms with counsel. The Parties agree that, in any subsequent interpretation and  
2 construction of this Consent Judgment entered thereon, the terms and provisions shall not be  
3 construed against either Party.

4 **13. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

5 In the event a dispute arises with respect to either Party's compliance with the terms of this  
6 Consent Judgment entered by the Court, the Parties shall meet either in person or by telephone and  
7 endeavor to resolve the dispute in an amicable manner. No action or motion may be filed in the  
8 absence of such a good faith attempt to resolve the dispute beforehand. In the event an action or  
9 motion is filed, however, the prevailing Party may seek to recover costs and reasonable attorneys'  
10 fees. As used in the preceding sentence, the term "prevailing party" means a party who is  
11 successful in obtaining relief more favorable to it than the relief that the other party was amenable  
12 to providing during the Parties' good faith attempt to resolve the dispute that is the subject of such  
13 enforcement action.

14 **14. ENTIRE AGREEMENT, AUTHORIZATION, COUNTERPARTS**

15 **14.1** This Consent Judgment contains the sole and entire agreement and understanding of  
16 the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
17 negotiations, commitments and understandings related hereto. No representations, oral or  
18 otherwise, express or implied, other than those contained herein have been made by any Party  
19 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed  
20 to exist or to bind any of the Parties.

21 **14.2** Each signatory to this Consent Judgment certifies that he or she is fully authorized  
22 by the Party he or she represents to stipulate to the Consent Judgment.

23 **14.3** The stipulations to this Consent Judgment may be executed in counterparts and by  
24 means of facsimile or portable document format (pdf), which taken together shall be deemed to  
25 constitute one document.

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**15. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF CONSENT JUDGMENT**

15.1 This settlement has come before the Court upon the request of the Parties. The Parties request the Court to fully review this settlement and, being fully informed regarding the matters which are the subject of this action, to:

(1) Find that the terms and provisions of this Consent Judgment represent a fair and equitable settlement of all matters raised by the allegations of the Complaint, that the matter has been diligently prosecuted, and that the public interest is served by such settlement; and

(2) Make the findings pursuant to Health & Safety Code § 25249.7 (f) (4), approve the settlement and approve this Consent Judgment.

**IT IS SO STIPULATED:**

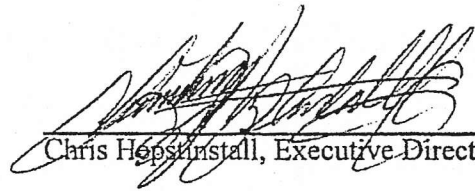
**NU SKIN ENTERPRISES, INC.**

Dated: \_\_\_\_\_, 2013

\_\_\_\_\_

**ENVIRONMENTAL RESEARCH CENTER**

Dated: 7/12/, 2013

  
Chris Hopstinstall, Executive Director

**APPROVED AS TO FORM:**

**MORRISON & FOERSTER LLP**

Dated: \_\_\_\_\_, 2013

\_\_\_\_\_  
William F. Tarantino  
Attorney for Nu Skin Enterprises, Inc.

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(1) Find that the terms and provisions of this Consent Judgment represent a fair and equitable settlement of all matters raised by the allegations of the Complaint, that the matter has been diligently prosecuted, and that the public interest is served by such settlement; and

(2) Make the findings pursuant to Health & Safety Code § 25249.7 (f) (4), approve the settlement and approve this Consent Judgment.

**IT IS SO STIPULATED:**

**NU SKIN ENTERPRISES, INC.**

Dated: \_\_\_\_\_, 2013

**ENVIRONMENTAL RESEARCH CENTER**

Dated: \_\_\_\_\_, 2013

\_\_\_\_\_  
Chris Hepstinstall, Executive Director

**APPROVED AS TO FORM:**

**MORRISON & FOERSTER LLP**

Dated: July 3, 2013

\_\_\_\_\_  
William F. Tarantino  
Attorney for Nu Skin Enterprises, Inc.

**LAW OFFICE OF MICHAEL FREUND**

Dated: July 12, 2013

\_\_\_\_\_  
Michael Freund  
Attorney for Environmental Research Center

**ORDER AND JUDGMENT**

1  
2 Based upon the Parties' stipulation, and good cause appearing therefor, this Consent  
3 Judgment is approved and judgment is hereby entered according to its terms.  
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6  
7 Dated: 10/8, 2013

**LYNN DURYEE**

Judge, Superior Court of the State of California

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**EXHIBIT A**  
(Sixty-Day Notices)

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MICHAEL FREUND  
ATTORNEY AT LAW  
1915 ADDISON STREET  
BERKELEY, CALIFORNIA 94704-1101

TEL 510/540-1992  
FAX 510/540-5543  
EMAIL FREUND1@AOL.COM

June 29, 2010

Re: Notice of Violation Against Nu Skin Enterprises, Inc. for Violation of California Health & Safety Code Section 25249.6

Dear Prosecutors:

I represent the Environmental Research Center ("ERC"), a non-profit California corporation whose mission is to safeguard the public from health hazards that impact families, workers and the environment. ERC is dedicated to reducing the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees and encouraging corporate responsibility. ERC is located at 5694 Mission Center Road, # 199, San Diego, CA 92108. Through this Notice of Violation, ERC seeks to reduce exposure to the public from lead that is contained in the named products manufactured and distributed by Nu Skin Enterprises, Inc.

This letter constitutes notification that Nu Skin Enterprises, Inc., located at 75 West Center Street, Provo, UT 84601 has violated the warning requirement of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with section 25249.5 of the Health and Safety Code).

In particular, this company has manufactured and distributed products which have exposed and continue to expose numerous individuals within California to lead. Lead was listed pursuant to Proposition 65 as a chemical known to cause developmental toxicity, and male and female reproductive toxicity on February 27, 1987. Lead was listed pursuant to Proposition 65 as a carcinogen on October 1, 1992. The time period of these violations commenced one year after the listed dates above. The primary route of exposure has been oral through ingestion.

Nu Skin Enterprises, Inc. is exposing people to lead from the following products: Nu Skin Pharmanex Standard Teagreen 97 Cell Protection; Nu Skin Pharmanex Standard Cordymax CS-4 Stamina Boost; Nu Skin Pharmanex Standard Cortitrol Cortisol Management; Nu Skin Pharmanex Standard Bioginko 27/7 Mental Sharpness; and Nu Skin Pharmanex Standard Digestive Formula.

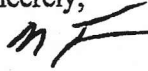
Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to certain listed chemicals. Nu Skin Enterprises, Inc. is in violation of Proposition 65 because the company failed to provide a warning to persons using their products that they are being exposed to lead. (22 C.C.R. section 12601.) While in the course of doing business, the company is knowingly and intentionally exposing people to lead, without first providing clear and reasonable warning. (Health and Safety Code section 25249.6.) The method of warning should be a warning that appears on the product's label. 22 C.C.R. section 12601 (b)(1) (A).

Proposition 65 requires that notice and intent to sue be given to a violator 60-days before the suit is filed. With this letter, ERC gives notice of the alleged violation to the noticed party and the appropriate governmental authorities. This Notice covers all violations of Proposition 65 that are currently known to ERC from information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, and referenced as Appendix A, has been provided to the noticed party.

Based on the allegations set forth in this Notice, ERC intends to file a citizen enforcement action against Nu Skin Enterprises, Inc. unless the company agrees in an enforceable written instrument to: (1) reformulate these products so as to eliminate further lead exposures; and (2) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this Notice, ERC will focus its efforts in seeking a constructive resolution of this matter. Such resolution will avoid both further unwarned consumer exposures to lead and expensive and time-consuming litigation.

If you have any questions, please contact my office at your earliest convenience.

Sincerely,

A handwritten signature in black ink, appearing to be 'MF', written over the word 'Sincerely,'.

Michael Freund

cc: Chris Heptinstall, ERC  
Karen Evans, Esq. ERC

## CERTIFICATE OF MERIT

### Health and Safety Code Section 25249.7 (d)

I, Michael Freund hereby declare:

1. This Certificate of Merit accompanies the Notice of Violation in which it is alleged that the party identified in the Notice has violated Health and Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party Environmental Research Center ("ERC"). ERC is dedicated to reducing the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees and encouraging corporate responsibility. The Notice of Violation alleges that the party identified has exposed persons in California to lead from products that it manufactures and distributes. Please refer to the Notice of Violation for additional details regarding the alleged violations.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is the subject of the action. In particular, I have consulted with the laboratory that conducted the testing to determine the concentration of lead in the products identified in the Notice of Violation and I have relied on the testing results. The testing was conducted by a reputable testing laboratory with substantial experience in testing for lead. These facts, studies or other data derived through this investigation overwhelmingly demonstrate that the party identified in the Notice of Violation exposes persons to lead through oral exposure (ingestion).
4. Based on my consultation with the laboratory, the results of the laboratory testing, as well as published studies on lead, it is clear that there is sufficient evidence that human

exposures exist from exposure to the products from the noticed party. Furthermore, as a result of the above, I have concluded that there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.

5. The copy of this Certificate of Merit served on the California Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health & Safety Code Section 25249.7 (h) (2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies or other data reviewed by those persons.

Dated: June 27, 2010.



---

Michael Freund  
Attorney for Environmental Research Center

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the County of Alameda. I am over the age of eighteen years and not a party to the within entitled action; my business address is 1915 Addison Street, Berkeley, California 94704. On June 29, 2010 I served the within:

Notice of Violation and Certificate of Merit (Supporting documentation pursuant to 11 CCR section 3102 sent to Attorney General only)

on the parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box in Oakland, California to said parties addressed as follows:

See Attached Service List

I, Michael Freund, declare under penalty of perjury that the foregoing is true and correct.

Executed on June 29, 2010 at Berkeley, California.



---

Michael Freund

District Attorney of Alameda County  
1225 Fallon Street, Room 900  
Oakland, CA 94612

District Attorney of Glenn County  
PO Box 430  
Willows, CA 95988

District Attorney of Marin County  
3501 Civic Center Dr., Room 130  
San Rafael, CA 94903

District Attorney of Colusa County  
547 Market Street  
Colusa, CA 95932

District Attorney of Kings County  
1400 West Lacey  
Hanford, CA 93239

District Attorney of Mono County  
PO Box 617  
Bridgeport, CA 93517

District Attorney of Contra Costa  
County  
627 Ferry Street  
Martinez, CA 94553

District Attorney of Lake County  
255 N. Forbes Street  
Lakeport, CA 95453

District Attorney of Mariposa County  
PO Box 730  
Mariposa, CA 95338

District Attorney of Alpine County  
PO Box 248  
Markleeville, CA 96120

District Attorney of Humboldt County  
825 5<sup>th</sup> Street  
Eureka, CA 95501

District Attorney of Monterey County  
230 Church Street, Bdg. 2  
Salinas, CA 93901

District Attorney of Del Norte County  
450 H Street, Ste 171  
Crescent City, CA 95531

District Attorney of Imperial County  
939 Main Street  
El Centro, CA 92243

District Attorney of Mendocino County  
PO Box 1000  
Ukiah, CA 95482

District Attorney of Amador County  
708 Court Street, # 202  
Jackson, CA 95642

District Attorney of Lassen County  
220 S. Lassen St., Ste 8  
Susanville, CA 96130

District Attorney of Napa County  
931 Parkway Mall  
Napa, CA 94559

District Attorney of Butte County  
25 County Center Drive  
Oroville, CA 95965

District Attorney of Inyo County  
PO Drawer D  
Independence, CA 93526

District Attorney of Merced County  
2222 "M" Street  
Merced, CA 95340

District Attorney of El Dorado County  
515 Main Street  
Placerville, CA 95667

District Attorney of Los Angeles County  
210 W. Temple Street, Room 345  
Los Angeles, CA 90012

District Attorney of Nevada County  
110 Union Street  
Nevada City, CA 95959-2503

District Attorney of Calaveras County  
891 Mountain Ranch Road  
San Andreas, CA 95249

District Attorney of Madera County  
209 West Yosemite Ave.  
Madera, CA 93637

District Attorney of Orange County  
401 Civic Center Drive West  
Santa Ana, CA 92701

District Attorney of Fresno County  
2220 Tulare Street, # 1000  
Fresno, CA 93721

District Attorney of Kern County  
1215 Truxtun Ave.  
Bakersfield, CA 93301

District Attorney of Modoc County  
204 S. Court Street  
Alturas, CA 96101-4020

District Attorney of Placer County  
2501 North Lake Blvd.  
Tahoe City, CA 96145

District Attorney of San Mateo County  
400 County Ctr., 3<sup>rd</sup> Floor  
Redwood City, CA 94063

District Attorney of Sutter County  
446 Second Street  
Yuba City, CA 95991

District Attorney of San Bernardino Cty  
316 N. Mountain View Ave.  
San Bernardino, CA 92415

District Attorney of Sierra County  
Courthouse, PO Box 457  
Donieville, CA 95936

District Attorney of Ventura County  
800 South Victoria Ave.  
Ventura, CA 93009

District Attorney of Plumas County  
520 Main Street, Room 404  
Quincy, CA 95971

District Attorney of Santa Barbara  
County  
1105 Santa Barbara Street  
Santa Barbara, 93101

District Attorney of Tehama County  
PO Box 519  
Red Bluff, CA 96080

District Attorney of San Diego County  
330 West Broadway, Suite 1320  
San Diego, 92101

District Attorney of Siskiyou County  
PO Box 986  
Yreka, CA 96097

District Attorney of Yolo County  
301 Second Street  
Woodland, CA 95695

District Attorney of Riverside County  
4075 Main Street  
Riverside, CA 92501

District Attorney of Solano County  
675 Texas Street, Suite 4500  
Fairfield, CA 94533

District Attorney of Trinity County  
PO Box 310  
11 Court Street  
Weaverville, CA 96093

District Attorney of San Francisco  
County  
850 Bryant Street, Room 325  
San Francisco, CA 94103

District Attorney of Santa Clara County  
70 West Hedding Street, West Wing  
San Jose, CA 95110

District Attorney of Yuba County  
215 Fifth Street  
Marysville, CA 95901

District Attorney of Sacramento County  
901 "G" Street  
Sacramento, CA 95814

District Attorney of Santa Cruz County  
701 Ocean Street, Room 200  
Santa Cruz, CA 95060

District Attorney of Tulare County  
221 S. Mooney Ave., Room 224  
Visalia, CA 93291

District Attorney of San Joaquin County  
PO Box 990  
Stockton, CA 95201

District Attorney of Sonoma County  
600 Administration Drive, Room 212J  
Santa Rosa, CA 95403

District Attorney of Tuolumne County  
423 No. Washington Street  
Sonora, CA 95370

District attorney of San Luis Obispo  
County  
1050 Monterey St., Room 450  
San Luis Obispo, CA 93408

District Attorney of Shasta County  
1525 Court Street, Third Floor  
Redding, CA 96001-1632

San Jose City Attorney's Office  
200 East Santa Clara Street  
San Jose, CA 95113

District Attorney of San Benito County  
419 Fourth Street, 2<sup>nd</sup> Floor  
Hollister, CA 95023

District Attorney of Stanislaus County  
800 11<sup>th</sup> Street, Room 200  
PO Box 442  
Modesto, CA 95353

Los Angeles City Attorney's Office  
800 City Hall East  
200 N. Main Street  
Los Angeles, CA 90012





**Environmental Research Center**

5694 Mission Center Road #199

San Diego, CA 92108

619.309.4194

September 24, 2010

**VIA CERTIFIED MAIL**

Current CEO or President  
Nu Skin Enterprises, Inc.  
75 West Center Street  
Orovo, UT 84601

**VIA PRIORITY MAIL**

District Attorneys of All California Counties  
and Select City Attorneys  
(See Attached Certificate of Service)

CT Corporation System  
(Nu Skin Enterprises, Inc.'s Registered  
Agent for Service of Process)  
136 East South Temple, Suite 2100  
Salt Lake City, UT 84111

**Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.***

Dear Addressees:

I am the Executive Director of the Environmental Research Center ("ERC") in connection with this Notice of Violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

The name of the Company covered by this Notice that violated Proposition 65 is:

**Nu Skin Enterprises, Inc.**

The products that are the subject of this Notice and the chemical in those products identified as exceeding allowable levels are:

**NSE Products Inc. Cartilage Formula Pharmanex - Lead**  
**NSE Products Inc. Pharmanex G3 - Lead**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead as chemical known to cause cancer.

This letter is a Notice to Nu Skin Enterprises, Inc., and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This Notice covers all violations of Proposition 65 involving Nu Skin Enterprises, Inc. currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, has been provided to the Noticed Company with a copy of this letter.

Nu Skin Enterprises, Inc. has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals. The primary route of exposure to these chemicals has been through ingestion, but may have also occurred through inhalation and/or dermal contact. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product's label. Nu Skin Enterprises, Inc. has violated Proposition 65 because the Company has failed to provide an appropriate warning to persons using these products that they are being exposed to the identified chemical.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this Notice unless Nu Skin Enterprises, Inc. agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; and (2) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65 and ERC's objectives in pursuing this Notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

Please direct all questions concerning this notice to ERC's attorney, Michael Freund, address: 1915 Addison Street, Berkeley, California, 94704-1101, telephone no.: 510-540-1992, e-mail: Freund1@aol.com.

Sincerely,



---

Chris Heptinstall  
Executive Director  
Environmental Research Center

cc: Karen Evans

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Nu Skin Enterprises, Inc. and its Registered Agent for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center's Notice of Proposition 65 Violations by Nu Skin Enterprises, Inc.**

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached sixty-day Notice in which it is alleged the party identified in the Notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the Notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this Certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.



Dated: September 24, 2010

---

Michael Freund  
Attorney for Environmental Research Center

**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742

On September 24, 2010, I served the following documents:

**NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"**

On the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

Current CEO or President  
Nu Skin Enterprises, Inc.  
75 West Center Street  
Orovo, UT 84601

CT Corporation System  
(Nu Skin Enterprises, Inc.'s Registered  
Agent for Service of Process)  
136 East South Temple, Suite 2100  
Salt Lake City, UT 84111

On September 24, 2010, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Post Office Box 70550  
Oakland, CA 94612-0550

On September 24, 2010, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service for delivery by Priority Mail.

Executed on September 24, 2010, in Fort Oglethorpe, Georgia.



Chris Heptinstall

Service List

District Attorney, Alameda County  
1225 Fallon Street, Room 900  
Oakland, CA 94612

District Attorney, Alpine County  
P.O. Box 248  
Markleeville, CA 96120

District Attorney, Amador County  
708 Court Street, #202  
Jackson, CA 95642

District Attorney, Butte County  
25 County Center Drive  
Oroville, CA 95965

District Attorney, Calaveras County  
891 Mountain Ranch Road  
San Andreas, CA 95249

District Attorney, Colusa County  
547 Market Street  
Colusa, CA 95932

District Attorney, Contra Costa County  
900 Ward Street  
Martinez, CA 94553

District Attorney, Del Norte County  
450 H Street, Ste. 171  
Crescent City, CA 95531

District Attorney, El Dorado County  
515 Main Street  
Placerville, CA 95667

District Attorney, Fresno County  
2220 Tulare Street, #1000  
Fresno, CA 93721

District Attorney, Glenn County  
Post Office Box 430  
Willows, CA 95988

District Attorney, Humboldt County  
825 5th Street  
Eureka, CA 95501

District Attorney, Imperial County  
939 West Main Street, Ste 102  
El Centro, CA 92243

District Attorney, Inyo County  
230 W. Line Street  
Bishop, CA 93514

District Attorney, Kern County  
1215 Truxtun Avenue  
Bakersfield, CA 93301

District Attorney, Kings County  
1400 West Lacey Boulevard  
Hanford, CA 93230

District Attorney, Lake County  
255 N. Forbes Street  
Lakeport, CA 95453

District Attorney, Lassen County  
220 South Lassen Street, Ste. 8  
Susanville, CA 96130

District Attorney, Los Angeles County  
210 West Temple Street, Rm 345  
Los Angeles, CA 90012

District Attorney, Madera County  
209 West Yosemite Avenue  
Madera, CA 93637

District Attorney, Marin County  
3501 Civic Center, Room 130  
San Rafael, CA 94903

District Attorney, Mariposa County  
Post Office Box 730  
Mariposa, CA 95338

District Attorney, Mendocino County  
Post Office Box 1000  
Ukiah, CA 95482

District Attorney, Merced County  
2222 M Street  
Merced, CA 95340

District Attorney, Modoc County  
204 S Court Street, Room 202  
Alturas, CA 96101-4020

District Attorney, Mono County  
Post Office Box 617  
Bridgeport, CA 93517

District Attorney, Monterey County  
230 Church Street, Bldg 2  
Salinas, CA 93901

District Attorney, Napa County  
931 Parkway Mall  
Napa, CA 94559

District Attorney, Nevada County  
110 Union Street  
Nevada City, CA 95959

District Attorney, Orange County  
401 Civic Center Drive West  
Santa Ana, CA 92701

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
September 24, 2010  
Page 6

District Attorney, Placer County  
10810 Justice Center Drive, Ste 240  
Roseville, CA 95678

District Attorney, Plumas County  
520 Main Street, Room 404  
Quincy, CA 95971

District Attorney, Riverside County  
4075 Main Street, 1st Floor  
Riverside, CA 92501

District Attorney, Sacramento County  
901 "G" Street  
Sacramento, CA 9581

District Attorney, San Benito County  
419 Fourth Street, 2<sup>nd</sup> Floor  
Hollister, CA 95023

District Attorney, San Bernardino County  
316 N. Mountain View Avenue  
San Bernardino, CA 92415-0004

District Attorney, San Diego County  
330 West Broadway, Room 1300  
San Diego, CA 92101

District Attorney, San Francisco County  
850 Bryant Street, Room 325  
San Francisco, CA 94103

District Attorney, San Joaquin County  
Post Office Box 990  
Stockton, CA 95201

District Attorney, San Luis Obispo County  
1050 Monterey Street, Room 450  
San Luis Obispo, CA 93408

District Attorney, San Mateo County  
400 County Ctr., 3<sup>rd</sup> Floor  
Redwood City, CA 94063

District Attorney, Santa Barbara County  
1105 Santa Barbara Street  
Santa Barbara, CA 93101

District Attorney, Santa Clara County  
70 West Hedding Street  
San Jose, CA 95110

District Attorney, Santa Cruz County  
701 Ocean Street, Room 200  
Santa Cruz, CA 95060

District Attorney, Shasta County  
1525 Court Street, Third Floor  
Redding, CA 96001-1632

District Attorney, Sierra County  
PO Box 457  
Downieville, CA 95936

District Attorney, Siskiyou County  
Post Office Box 986  
Yreka, CA 96097

District Attorney, Solano County  
675 Texas Street, Ste 4500  
Fairfield, CA 94533

District Attorney, Sonoma County  
600 Administration Drive, Room 212J  
Santa Rosa, CA 95403

District Attorney, Stanislaus County  
832 12<sup>th</sup> Street, Ste 300  
Modesto, CA 95353

District Attorney, Sutter County  
446 Second Street  
Yuba City, CA 95991

District Attorney, Tehama County  
Post Office Box 519  
Red Bluff, CA 96080

District Attorney, Trinity County  
Post Office Box 310  
Weaverville, CA 96093

District Attorney, Tulare County  
221 S. Mooney Avenue, Room 224  
Visalia, CA 93291

District Attorney, Tuolumne County  
423 N. Washington Street  
Sonora, CA 95370

District Attorney, Ventura County  
800 South Victoria Avenue  
Ventura, CA 93009

District Attorney, Yolo County  
301 2<sup>nd</sup> Street  
Woodland, CA 95695

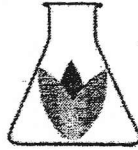
District Attorney, Yuba County  
215 Fifth Street  
Marysville, CA 95901

Los Angeles City Attorney's Office  
City Hall East  
200 N. Main Street, Rm 800  
Los Angeles, CA 90012

San Diego City Attorney's Office  
1200 3rd Avenue, Ste 1620  
San Diego, CA 92101

San Francisco City Attorney's Office  
City Hall, Room 234  
1 Drive Carlton B Goodlett Place  
San Francisco, CA 94102

San Jose City Attorney's Office  
200 East Santa Clara Street  
San Jose, CA 95113



## Environmental Research Center

5694 Mission Center Road #199

San Diego, CA 92108

619.309.4194

January 14, 2011

### VIA CERTIFIED MAIL

Current CEO or President  
Nu Skin Enterprises, Inc.  
75 West Center Street  
Provo, UT 84601

### VIA PRIORITY MAIL

District Attorneys of All California Counties  
and Select City Attorneys  
(See Attached Certificate of Service)

CT Corporation System  
(Nu Skin Enterprises, Inc.'s Registered  
Agent for Service of Process)  
136 East South Temple, Suite 2100  
Salt Lake City, UT 84111

**Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.***

Dear Addressees:

I am the Executive Director of the Environmental Research Center ("ERC") in connection with this Notice of Violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

The name of the Company covered by this Notice that violated Proposition 65 is:

**Nu Skin Enterprises, Inc.**

The products that are the subject of this Notice and the chemical in those products identified as exceeding allowable levels are:

**Nu Skin Enterprises Pharmanax Standard ReishiMax GLp 60 Capsules - Lead**  
**Nu Skin Enterprises Pharmanex My Victory DuoLean 90 Capsules - Lead**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead as chemical known to cause cancer.

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

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This letter is a Notice to Nu Skin Enterprises, Inc., and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This Notice covers all violations of Proposition 65 involving Nu Skin Enterprises, Inc. currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, has been provided to the Noticed Company with a copy of this letter.

Nu Skin Enterprises, Inc. has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals. The primary route of exposure to these chemicals has been through ingestion, but may have also occurred through inhalation and/or dermal contact. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product's label. Nu Skin Enterprises, Inc. has violated Proposition 65 because the Company has failed to provide an appropriate warning to persons using these products that they are being exposed to the identified chemical.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this Notice unless Nu Skin Enterprises, Inc. agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; and (2) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65 and ERC's objectives in pursuing this Notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

Please direct all questions concerning this notice to ERC's attorney, Michael Freund, address: 1915 Addison Street, Berkeley, California, 94704-1101, telephone no.: 510-540-1992, e-mail: Freund1@aol.com.

Sincerely,



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Chris Heptinstall  
Executive Director  
Environmental Research Center

cc: Karen Evans

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Nu Skin Enterprises, Inc. and its Registered Agent for Service of Process only)

Additional Supporting Information for Certificate of Merit (to AG only)



**CERTIFICATE OF MERIT**

**Re: Environmental Research Center's Notice of Proposition 65 Violations by Nu Skin Enterprises, Inc.**

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached sixty-day Notice in which it is alleged the party identified in the Notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the Notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this Certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: January 14, 2011



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Michael Freund  
Attorney for Environmental Research Center

**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742

On January 14, 2011, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"**

On the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

Current CEO or President  
Nu Skin Enterprises, Inc.  
75 West Center Street  
Provo, UT 84601

CT Corporation System  
(Nu Skin Enterprises, Inc.'s Registered  
Agent for Service of Process)  
136 East South Temple, Suite 2100  
Salt Lake City, UT 84111

On January 14, 2011, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)**

On the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Post Office Box 70550  
Oakland, CA 94612-0550

On January 14, 2011, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT**

On each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service for delivery by Priority Mail.

Executed on January 14, 2011, in Fort Oglethorpe, Georgia.



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Chris Heptinstall

Service List

District Attorney, Alameda County  
1225 Fallon Street, Room 900  
Oakland, CA 94612

District Attorney, Alpine County  
P.O. Box 248  
Markleeville, CA 96120

District Attorney, Amador County  
708 Court Street, #202  
Jackson, CA 95642

District Attorney, Butte County  
25 County Center Drive  
Orville, CA 95965

District Attorney, Calaveras County  
891 Mountain Ranch Road  
San Andreas, CA 95249

District Attorney, Colusa County  
547 Market Street  
Colusa, CA 95932

District Attorney, Contra Costa County  
900 Ward Street  
Martinez, CA 94553

District Attorney, Del Norte County  
450 H Street, Ste. 171  
Crescent City, CA 95531

District Attorney, El Dorado County  
515 Main Street  
Placerville, CA 95667

District Attorney, Fresno County  
2220 Tulare Street, #1000  
Fresno, CA 93721

District Attorney, Glenn County  
Post Office Box 430  
Willows, CA 95988

District Attorney, Humboldt County  
825 5th Street  
Eureka, CA 95501

District Attorney, Imperial County  
939 West Main Street, Ste 102  
El Centro, CA 92243

District Attorney, Inyo County  
230 W. Line Street  
Bishop, CA 93514

District Attorney, Kern County  
1215 Truxtun Avenue  
Bakersfield, CA 93301

District Attorney, Kings County  
1400 West Lacey Boulevard  
Hanford, CA 93230

District Attorney, Lake County  
255 N. Forbes Street  
Lakeport, CA 95453

District Attorney, Lassen County  
220 South Lassen Street, Ste. 8  
Susanville, CA 96130

District Attorney, Los Angeles County  
210 West Temple Street, Rm 345  
Los Angeles, CA 90012

District Attorney, Madera County  
209 West Yosemite Avenue  
Madera, CA 93637

District Attorney, Marin County  
3501 Civic Center, Room 130  
San Rafael, CA 94903

District Attorney, Mariposa County  
Post Office Box 730  
Mariposa, CA 95338

District Attorney, Mendocino County  
Post Office Box 1000  
Ukiah, CA 95482

District Attorney, Merced County  
2222 M Street  
Merced, CA 95340

District Attorney, Modoc County  
204 S Court Street, Room 202  
Alturas, CA 96101-4020

District Attorney, Mono County  
Post Office Box 617  
Bridgeport, CA 93517

District Attorney, Monterey County  
230 Church Street, Bldg 2  
Salinas, CA 93901

District Attorney, Napa County  
931 Parkway Mall  
Napa, CA 94559

District Attorney, Nevada County  
110 Union Street  
Nevada City, CA 95959

District Attorney, Orange County  
401 Civic Center Drive West  
Santa Ana, CA 92701

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

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District Attorney, Placer County  
10810 Justice Center Drive, Ste 240  
Roseville, CA 95678

District Attorney, Plumas County  
520 Main Street, Room 404  
Quincy, CA 95971

District Attorney, Riverside County  
4075 Main Street, 1st Floor  
Riverside, CA 92501

District Attorney, Sacramento County  
901 "G" Street  
Sacramento, CA 9581

District Attorney, San Benito County  
419 Fourth Street, 2<sup>nd</sup> Floor  
Hollister, CA 95023

District Attorney, San Bernardino County  
316 N. Mountain View Avenue  
San Bernardino, CA 92415-0004

District Attorney, San Diego County  
330 West Broadway, Room 1300  
San Diego, CA 92101

District Attorney, San Francisco County  
830 Bryant Street, Room 325  
San Francisco, CA 94103

District Attorney, San Joaquin County  
Post Office Box 990  
Stockton, CA 95201

District Attorney, San Luis Obispo County  
1050 Monterey Street, Room 450  
San Luis Obispo, CA 93408

District Attorney, San Mateo County  
400 County Ctr., 3<sup>rd</sup> Floor  
Redwood City, CA 94063

District Attorney, Santa Barbara County  
1105 Santa Barbara Street  
Santa Barbara, CA 93101

District Attorney, Santa Clara County  
70 West Hedding Street  
San Jose, CA 95110

District Attorney, Santa Cruz County  
701 Ocean Street, Room 200  
Santa Cruz, CA 95060

District Attorney, Shasta County  
1525 Court Street, Third Floor  
Redding, CA 96001-1632

District Attorney, Sierra County  
PO Box 457  
Downieville, CA 95936

District Attorney, Siskiyou County  
Post Office Box 986  
Yreka, CA 96097

District Attorney, Solano County  
675 Texas Street, Ste 4500  
Fairfield, CA 94533

District Attorney, Sonoma County  
600 Administration Drive, Room 212J  
Santa Rosa, CA 95403

District Attorney, Stanislaus County  
832 12<sup>th</sup> Street, Ste 300  
Modesto, CA 95353

District Attorney, Sutter County  
446 Second Street  
Yuba City, CA 95991

District Attorney, Tehama County  
Post Office Box 519  
Red Bluff, CA 96080

District Attorney, Trinity County  
Post Office Box 310  
Weaverville, CA 96093

District Attorney, Tulare County  
221 S. Mooney Avenue, Room 224  
Visalia, CA 93291

District Attorney, Tuolumne County  
423 N. Washington Street  
Sonora, CA 95370

District Attorney, Ventura County  
800 South Victoria Avenue  
Ventura, CA 93009

District Attorney, Yolo County  
301 2<sup>nd</sup> Street  
Woodland, CA 95695

District Attorney, Yuba County  
215 Fifth Street  
Marysville, CA 95901

Los Angeles City Attorney's Office  
City Hall East  
200 N. Main Street, Rm 800  
Los Angeles, CA 90012

San Diego City Attorney's Office  
1200 3rd Avenue, Ste 1620  
San Diego, CA 92101

San Francisco City Attorney's Office  
City Hall, Room 234  
1 Drive Carlton B Goodlett Place  
San Francisco, CA 94102

San Jose City Attorney's Office  
200 East Santa Clara Street  
San Jose, CA 95113